

APPEAL NO. 171208
FILED JULY 20, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case (CCH) hearing was held on November 30, 2016, with the record closing on April 14, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury sustained on (date of injury), does not extend to right shoulder tendinopathy of the rotator cuff and AC joint or a SLAP tear; (2) the appellant (claimant) reached maximum medical improvement (MMI) on May 2, 2016; and (3) the claimant's impairment rating (IR) is three percent. The claimant appealed, disputing the hearing officer's determinations of the extent of injury, MMI, and IR. The claimant contends that the determinations of the hearing officer are against the great weight and preponderance of the evidence. The respondent (self-insured) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), at least in the form of a right shoulder sprain/strain and thoracic sprain/strain and that the Texas Department of Insurance, Division of Workers' Compensation (Division)-selected designated doctor, (Dr. L), certified that the claimant reached MMI on May 2, 2016, with a three percent IR. The claimant testified that he was injured while removing old wax from a classroom floor.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury sustained on (date of injury), does not extend to right shoulder tendinopathy of the rotator cuff and AC joint or SLAP tear is supported by sufficient evidence and is affirmed.

MMI

The hearing officer's determination that the claimant reached MMI on May 2, 2016, is supported by sufficient evidence and is affirmed.

IR

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Texas Department of Insurance, Division of Workers'

Compensation (Division) shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

After the CCH, the hearing officer issued a Presiding Officer's Directive to Dr. L informing him that the compensable injury was comprised of a right shoulder sprain/strain and thoracic sprain/strain. Dr. L re-examined the claimant on March 16, 2017, and certified that the claimant reached MMI on May 2, 2016, with a three percent IR using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). Dr. L placed the claimant in Thoracolumbar Diagnosis-Related Estimate Category I: Minor Impairment and assessed zero percent impairment.

Dr. L obtained range of motion (ROM) measurements for the claimant's right shoulder and assessed three percent impairment. Dr. L recorded the range of measurements for the claimant's right shoulder as follows: flexion 150° assigning two percent upper extremity (UE) impairment; extension 50° assigning zero percent UE impairment; abduction 140° assigning two percent impairment; adduction 30° assigning one percent UE impairment; internal rotation 45° assigning two percent UE impairment (after rounding to 50°); and external rotation 90° assigning zero percent UE impairment. Dr. L then stated that the ROM measurements resulted in five percent UE which converts to three percent whole person impairment. The AMA Guides provide at page 3/45 that the ROM impairments should be added to obtain the UE impairment for the shoulder and then converted to whole person using Table 3, page 3/20.

Dr. L's assignment of three percent whole person impairment is in error. Adding the UE impairment using the ROM figures measured by Dr. L results in seven percent UE impairment rather than five percent UE impairment as reported by the designated doctor. Conversion of seven percent UE impairment to whole person impairment results in four percent impairment rather than three percent impairment as certified by Dr. L.

The Appeals Panel has previously stated that, where the certifying doctor's report provides the component parts of the rating that are to be combined and the act of combining those numbers is a mathematical correction which does not involve medical

judgment or discretion, the Appeals Panel can recalculate the correct IR from the figures provided in the certifying doctor's report and render a new decision as to the correct IR. See Appeals Panel Decision (APD) 121194, decided September 6, 2012; APD 041413, decided July 30, 2004; APD 100111, decided March 22, 2010; and APD 101949, decided February 22, 2011. Under the facts of this case, the certifying doctor's assigned IR can be mathematically corrected based upon the right UE impairment figures documented in the designated doctor's narrative report.

The hearing officer found that the preponderance of the other medical evidence is not contrary to Dr. L's assigned IR, and after a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the hearing officer's determination that the claimant's IR is three percent and render a new decision that the claimant's IR is four percent as mathematically corrected.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of (date of injury), does not extend to right shoulder tendinopathy of the rotator cuff and AC joint or a SLAP tear.

We affirm the hearing officer's determination that the claimant reached MMI on May 2, 2016.

We reverse the hearing officer's determination that the claimant's IR is three percent and render a new decision that the claimant's IR is four percent.

The true corporate name of the insurance carrier is **YSLETA INDEPENDENT SCHOOL DISTRICT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**XAVIER DE LA TORRE, SUPERINTENDENT
9300 SIMS DRIVE
EL PASO, TEXAS 79925.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge